

### **REMARKS**

Reconsideration of the rejections set forth in the Office Action mailed August 21, 2006, is respectfully requested. The Office Action mailed on February 28, 2007, indicated that the Amendment and Response filed on December 22, 2006, was deemed non-responsive. Therefore, Applicants have assumed that the Amendment and Response filed on December 22, 2006 was not entered. The amendments to the claims in the current Amendment and Response are made based on the claim set filed in the Amendment and Response dated June 30, 2006. Claims 1-16, 49, 75, and 84-111 have been canceled without prejudice. Claims 29 and 79 have been amended. Support for these amendments can be found in the specification at, e.g, page 7, lines 5-13 and page 14, line 14 - page 15, line 8. Therefore, these amendments were made without the addition of new matter. Claims 29, 74, and 76-83 remain pending.

#### **Claim Objections**

Claims 75 and 89 were objected to under 37 CFR 1.75(c) as being of allegedly improper dependent form for failing to further limit the subject matter of a previous claim. Without conceding the propriety of the rejection, claims 75 and 89 were canceled without prejudice. Therefore, the objections to these claims are now moot.

#### **Art Rejections**

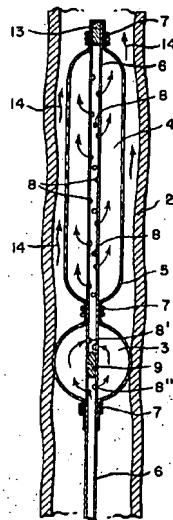
Claims 1, 4-8, 10, 13, and 16 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Goetz et al. (USP 3,692,018). Claims 9 and 12 were rejected as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over Goetz et

al. Without conceding the propriety of the rejection, claims 1, 4-10, 12-13, and 16 were canceled without prejudice. Therefore, the rejections to these claims are now moot.

Claims 2, 29, 49, 74-81, 84, 86-92, 94, 95, 98, 103-106, and 111 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Goetz et al. Claims 15, 83, 97, 99, 100, 107, and 108 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Goetz et al. in view of Karcher et al. (USP 4,697,574). Without conceding the propriety of the rejection, claims 2, 49, 75, 84, 86-92, 94, 85, 98, 103-106, and 111 were canceled without prejudice. Therefore, the rejections to these claims are now moot.

With respect to claims 29, 74, and 76-83, Goetz does not teach or suggest a method for mechanically assisting the pumping action of the heart that includes the step of “*sequentially deflating the third balloon and the second balloon during the ejection phase of the left ventricle to propagate blood flow antegrade.*” The currently amended claims require sequentially deflating the third balloon and then the second balloon, wherein the third balloon is located distal of the second balloon. In contrast, Goetz teaches that the balloons are deflated in the opposite sequence, i.e., that the expandable member (occluding chamber 3 in Fig. 1 depicted below) is deflated before the inflatable member (pumping chamber 4 of Fig. 1 depicted below) is deflated.

FIG. 1



("With the solid obstruction member it will be recognized that deflation of the occluding chamber also occurs in a sequential manner. In other words, during the deflation phase a reverse flow of air out of the balloon is created first from the occluding chamber through the perforations 8' and then from the pumping chamber." Col. 4, lines 32-38) The obstruction member 9 that is inserted into conduit 6 diverts the flow of gas and allows for sequential inflation of the occluding chamber, followed by the pumping chamber. This arrangement necessarily results in sequential deflation of the occluding chamber, followed by the pumping chamber. (see Col. 3, line 62 - Col. 4, line 39). Deflating the balloons in the order described by Goetz would decrease the efficiency of volume displacement because volume reduction will pull blood upstream from the peripheral vasculature rather than downstream from the left ventricle.

Furthermore, the Examiner has taken the position that it would have been obvious to have three or four balloons because Goetz mentions that there can be one or more inflatable pumping chambers. (See Office Action, Page 4). Even if there was more than one inflatable pumping chamber, as described above, Goetz still teaches to deflate the expandable member (occluding

chamber 3 in Fig. 1) before deflating the inflatable member(s) (pumping chamber 4 of Fig. 1).

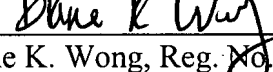
Therefore, the balloons would be deflated in an order that is opposite of the order of deflation required by the claims.

Therefore, Goetz teaches away from the claimed invention. Claims 74-83 depend from claim 29 and are therefore patentably distinct for the same reasons. Applicants respectfully request withdrawal of the rejections and reconsideration of the claims as amended.

Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,  
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